

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

GRACIELA GALINDO, *et al.*,

Plaintiffs,

v.

REEVES COUNTY, TEXAS, *et al.*,

Defendants.

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EP-10-CV-454-DB

DECLARATION OF JAMES BURRELL
UNDER PENALTY OF PERJURY
PURSUANT TO 28 U.S.C. § 1746

In accordance with the provisions of Section 1746 of Title 28, United States Code, I, the undersigned, JAMES BURRELL, hereby make the following unsworn declaration, under penalty of perjury, pertinent to the above-styled and numbered cause:

I am over the age of 18 and competent to make the following declaration based on my personal knowledge. I am currently retired from employment with the United States Bureau of Prisons (BOP). In the year 2008 I was employed by the BOP as Administrator, Privatization Management Branch. Within the scope of my assigned responsibilities, I was responsible for coordinating the planning and implementation process of establishment and oversight of private contract facilities. I was guided by the Federal Acquisition Regulation (FAR), Justice Acquisition Regulations (JAR), and the Bureau of Prisons Acquisition Policy (BOPAP), in the performance of my duties.

In 2005 the BOP solicited Requests for Proposals (RFPs) to operate a low-security prison facility that would house federal criminal prisoners, primarily a criminal alien population. I served as the Source Selection Official for this process.

The RFPs were processed in accordance with applicable FAR, JAR and BPAP guidelines. During the final phase of the selection process only three proposals were remaining for consideration. The bid submitted by Reeves County was one of the remaining bids still being considered. The factors that the BOP was permitted to take into consideration in the selection processed were dictated by the Source Selection Acquisition Plan (SSAP). These factors, and their respective importance, were: 1) Past Performance and Experience - 50%; 2) Technical- 35%; 3) Environmental - 5%; 4) Notification to Chief Law Enforcement Officer - 5%; and 5) Small Disadvantaged Business Utilization - 5%. As further stated in the acquisition plan, price was not scored and would be used as a deciding factor only if the non-price factors were more equal.

In my role as the Source Selection Official it was my duty to ensure that the proposals were evaluated solely on the factors and sub factors contained in the solicitation. I made a comparative assessment of proposals submitted in response to the RFP against all evaluation criteria in the solicitation. The BOP also utilized a Source Selection Evaluation Board (SSEB) and a Contracting Officer to evaluate the bid proposals. My comparative assessment was supported by the evaluation reports of the SSEB and the Contracting Officer.

Based on a comparison of the three proposals, the contracting officer compiled the following final scores: CCA received 856.7 points; Reeves County received 767.33 points and Cornell received 753.69 points for the non-price factors. In the category of Past Performance, Reeves County submitted updated past performance information which indicated that they had re-engineered their Quality Control Plan which was specifically tailored to the BOP contract facility monitoring (CFM) guidelines. Additionally, the Reeves County complex had recently undergone their annual review by the Texas Commission on Jail Standards and received a perfect score of 100%.

The Contracting Officer assigned to assist on this RFP also performed a price evaluation in accordance with FAR 1S.30S(a) (1), and determined a blended per diem rate at the two year mark to be as follows: CCA - \$63.52, Reeves - \$42.00, Cornell - \$50.14 (population of 920) and \$45.00 (population of 1380).

I determined the non-price factors to be essentially equal and therefore price became the deciding factor. Reeves County was the apparent lowest priced offer and therefore was awarded the contract. There were no factors that I was aware of which would have precluded the BOP from awarding the contract to Reeves County. The facility operated by Reeves County under this contract is known as the Reeves County Detention Center III (RCDC III).

It is my understanding that an inmate at the RCDC III by the name of Mr. Jesus Manuel Galindo, passed away on December 12, 2008 while incarcerated at the RCDC III. I was not involved in the decision to house Mr. Galindo at the RCDC III. It is further my understanding that the Plaintiffs in the above styled and numbered lawsuit allege that I am personally liable for the death of Mr. Galindo. Plaintiffs allege that the contract should not have been awarded to Reeves County because Reeves County, along with GEO and Physicians Network Associates (PNA) (who would be operating RCDC III) had an established history of failing to provide adequate medical care for inmates.

Plaintiff's allege in their Complaint that the Department of Justice conducted an investigation of PNA based on the medical care provided to inmates at a prison facility in Santa Fe. It is my understanding that this facility did not house BOP inmates. In either event, I was not aware of this investigation at the time the contract was awarded to Reeves County, nor was I aware of the allegations which caused this investigation to be initiated.

Plaintiff's also allege in their Complaint that there was testimony provided to Congress regarding the treatment provided to inmates the Rivers Correctional Institution in Winton, North Carolina, which was operated by GEO. I was not aware of this testimony or the allegations made during this testimony.

The BOP tries to ensure that private contractors are able to provide adequate medical care to inmates by requiring that these contractors obtain accreditation by the American Correctional Association ("ACA") and the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"). These requirements were included in contract with Reeves County for the operation of RCDC III.

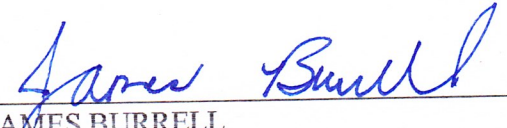
The ACA is an independent, non-governmental agency, that evaluates and accredits correctional facilities. The ACA performed an accreditation audit of RCDC III in September 2008, just prior to the death of Mr. Galindo. The ACA found no serious concerns that I was aware of. Had there been any significant concerns, they likely would have been uncovered by the ACA. There were some Notices of Concern (NOC) written in 2008, they however, documented mainly security concerns and procedural issues.

The JCAHO is also an independent, non-governmental entity. JCAHO performs audits and accreditation of facilities that provide health care, such as hospitals and clinics. JCAHO performed an audit of RCDC III on January 26, 2009 and fully accredited the clinical facility in February 2009.

I am not a licensed health care professional and am not competent to make decisions regarding the medical treatment of inmates. I was not personally involved in the day to day operations of RCDC III. I did not possess, nor did I exercise, any supervisory authority over any operations or employees of Reeves County, GEO or PNA. To my the best of my knowledge, I did

not know Mr. Galindo nor was I aware of any concerns regarding his treatment or the medical care he was provided.

Executed on this day, 11, August 2011



JAMES BURRELL